

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EARNEST FREEMAN,

Plaintiff,

vs.

U.S. DEPARTMENT OF LABOR,

Defendants.

Case No: C 10-4500 SBA

Related to:
C 02-1051 SBA

ORDER DISMISSING ACTION

Pro se Plaintiff Earnest Freeman filed the instant action in this Court on October 5, 2010, against the United States Department of Labor's Office of Workers' Compensation Programs, seeking to recover disability benefits. On February 24, 2011, Defendant filed a motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), which it noticed for hearing on May 24, 2011. Dkt. 19. Under Local Rule 7-3, any opposition or statement of non-opposition should have been filed by May 3, 2011, which is twenty-one days before the noticed hearing date. Paragraph 8 of the Court's Standing Orders expressly warns as follows: **"Effect of Failing to Oppose a Motion:** The failure of the opposing party to timely file a memorandum of points and authorities in opposition to any motion or request shall constitute a consent to the granting of the motion." Dkt. 17 at 3. Notwithstanding the requirements of Civil Local Rule 7-3, and the Court's warning, Plaintiff has filed nothing in response to Defendant's motion to dismiss.

"Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with any order of the court." Ferdik v. Bonzelet 963 F.2d 1258, 1260 (9th Cir. 1992). As such, the failure to file an opposition to a motion to dismiss in the manner prescribed by the Court's Local Rules is grounds for dismissal. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). "In determining whether to dismiss a

1 claim for failure to prosecute or failure to comply with a court order, the Court must weigh
2 the following factors: (1) the public's interest in expeditious resolution of litigation; (2) the
3 court's need to manage its docket; (3) the risk of prejudice to defendants/respondents;
4 (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition
5 of cases on their merits." Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002).

6 In the instant case, the Court finds that the above-referenced factors weigh in favor
7 of dismissal. With regard to the first factor, "[t]he public's interest in expeditious
8 resolution of litigation always favors dismissal." Yourish v. Cal. Amplifier, 191 F.3d 983,
9 990 (9th Cir. 1999). This is particularly true in the instant case, where Plaintiff has had
10 ample opportunity to prepare and file a response to Defendant's motion.

11 The second factor also militates in favor of dismissal. See Pagtalunan, 291 F.3d at
12 642 ("It is incumbent upon the Court to manage its docket without being subject to routine
13 noncompliance of litigants"); Yourish, 191 F.3d 983, 990 (9th Cir. 1999) (recognizing
14 court's need to control its own docket); see also Ferdik, 963 F.2d at 1261 (non-compliance
15 with a court's order diverts "valuable time that [the court] could have devoted to other
16 major and serious criminal and civil cases on its docket.").

17 The third factor, the risk of prejudice to the defendants, generally requires that "a
18 defendant ... establish that plaintiff's actions impaired defendant's ability to proceed to trial
19 or threatened to interfere with the rightful decision of the case." Pagtalunan, 291 F.3d at,
20 642. At the same time, the Ninth Circuit has "related the risk of prejudice to the plaintiff's
21 reason for defaulting." Id. Here, Plaintiff has offered no explanation for their failure to
22 respond nor is any apparent from the record. These facts also weigh strongly in favor of
23 dismissal. See Yourish, 191 F.3d at 991; Ghazali, 46 F.3d. at 54.

24 As to the fourth factor, the Court has already considered less drastic alternatives to
25 dismissal. As noted, the Court's Standing Orders warn that as a consequence of a party's
26 failure to oppose a motion, the Court will construe such inaction as a consent to the
27 granting of the unopposed motion. "[A] district court's warning to a party that failure to
28

1 obey the court's order will result in dismissal can satisfy the 'consideration of [less drastic
2 sanctions]' requirement." Ferdik, 963 F.2d at 1262.

3 The final factor, which favors disposition of cases on the merits, by definition,
4 weighs against dismissal. Pagtalunan, 291 F.3d at 643 ("Public policy favors disposition of
5 cases on the merits. Thus, this factor weighs against dismissal.").


6 **I. CONCLUSION**

7 In sum, the Court concludes that four of the five relevant factors weigh strongly in
8 favor of granting Defendant's unopposed motion and dismissing the action in its entirety.
9 Id. (affirming dismissal where three factors favored dismissal, while two factors weighed
10 against dismissal). Accordingly,

11 IT IS HEREBY ORDERED THAT Defendant's unopposed motion to dismiss is
12 GRANTED, and the instant action is DISMISSED WITH PREJUDICE. The Clerk shall
13 close the file and terminate all pending matters and deadlines. The hearing scheduled for
14 May 24, 2011, and the Case Management Conference scheduled for July 13, 2011, are
15 VACATED.

16 IT IS SO ORDERED.

17 Dated: May 24, 2011


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 EARNET FREEMAN,
5
6 Plaintiff,

7 v.

8 U.S. DEPARTMENT OF LABOR et al,
9 Defendant.

10 Case Number: CV10-04500 SBA

11 **CERTIFICATE OF SERVICE**

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on May 25, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Earnest Freeman
19 8716 MacArthur Blvd.
20 Apt. #3
Oakland, CA 94606

21 Dated: May 25, 2011

22 Richard W. Wieking, Clerk

23 By: LISA R CLARK, Deputy Clerk
24
25
26
27
28